

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor:	Fred W. Chapman	Confirmation No.	7893
Serial No.:	10/810,045		
Filed:	March 26, 2004	Customer No.:	53049
Examiner:	Jessica L. Sarcione	Group Art Unit:	3766
Docket No.:	1074-076US01/PB10102.00		
Title:	DEFIBRILLATORS CUSTOMIZED FOR ANTICIPATED PATIENTS		

CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via the United States Patent and Trademark Office electronic filing system on November 22, 2010.

By: /Allison M. Hughes/
Name: Allison M. Hughes

**REQUEST FOR RECONSIDERATION OF
PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)**

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Issue Notification dated September 28, 2010, included a determination of Patent Term Adjustment for U.S. Patent Application Serial No. 10/810,045 (now U.S. Patent No. 7,805,190) of 1176 days. According to the USPTO Patent Application Information Retrieval (PAIR) system, the patent term adjustment was calculated based on the determination that the application was subject to 140 days of delay under 35 U.S.C. § 154(b)(1)(A), 0 days of delay under § 154(b)(1)(B), 1137 days of delay under § 154(b)(1)(C), and 101 offsetting days of Applicant Delay under § 154(b)(2) (i.e., $140 + 0 + 1137 - 101 = 1176$). Applicant respectfully requests reconsideration of the Patent Term Adjustment determination. In particular, Applicant respectfully requests that the Patent Term Adjustment determination under § 154(b)(1)(B) be increased from 0 days to 252 days, thereby increasing the total Patent Term Adjustment under § 154 from 1137 days to 1389 days.

Under § 154(b)(1)(B), patentees are entitled to patent term extension for every day from the three-year anniversary of the filing date until the first of either the issue date or the filing of an Request for Continued Examination, except that a patentee is not entitled to additional term for the days beyond the three-year anniversary that are on the same calendar days of other U.S. Patent and Trademark Office delays. Patent term extension under § 154(b)(1)(B) also does not include any time consumed by appellate review by the Board of Patent Appeals and Interferences, which is separately addressed under § 154(b)(1)(C)(iii). *See* § 154(b)(1)(B)(ii). Specifically, 37 C.F.R. § 1.703(b)(4), which pertains to the provisions of 35 U.S.C. § 154(b)(1)(B)(ii), describes that patent term extension under § 154(b)(1)(B) does not include any days “beginning on the date which a notice of appeal to the Board of Patent Appeals and Interferences was filed . . . and ending on the date of the last decision by the Board of Patent Appeals and Interferences . . . or on the date of mailing of . . . a notice of allowance under 35 U.S.C. 151, whichever occurs first”

Applying the requirements of § 154(b)(1)(B) to the facts of U.S. Patent Application Serial No. 10/810,045, the Patentee respectfully submits that U.S. Patent Application Serial No. 10/810,045 is entitled to additional patent term corresponding to the number of days from January 19, 2010, the date of the last decision by the for Board of Patent Appeals and Interferences for U.S. Patent Application Serial No. 10/810,045, to September 28, 2010, the date that U.S. Patent Application Serial No. 10/810,045 issued as U.S. Patent No. 7,805,190. Under of § 154(b)(1)(B), U.S. Patent Application Serial No. 10/810,045 is entitled to patent term extension for every day from the three-year anniversary of the filing date until the issue date, except that the application is not entitled to patent term extension under § 154(b)(1)(B) for time consumed by appellate review by the Board of Patent Appeals and Interferences or for the days beyond the three-year anniversary date that are on the same calendar days of other U.S. Patent and Trademark Office delays. The three-year anniversary date for U.S. Patent Application Serial No. 10/810,045 was March 26, 2007, which occurred during a period of appellate review by the Board of Patent Appeals and Interferences that began with the filing of a Notice of Appeal on December 12, 2006, and ended with a decision by the for Board of Patent Appeals and Interferences on January 19, 2010.

Accordingly, the Patentee submits that U.S. Patent Application Serial No. 10/810,045 is entitled to patent term extension under § 154(b)(1)(B) from January 19, 2010, the date of the last

decision by the for Board of Patent Appeals and Interferences for U.S. Patent Application Serial No. 10/810,045, to September 28, 2010, the date that U.S. Patent Application Serial No. 10/810,045 issued as U.S. Patent No. 7,805,190. Because there is no overlapping U.S. Patent and Trademark Office delay between the two dates, the Patentee further submits that U.S. Patent Application Serial No. 10/810,045 is entitled to 252 additional days of patent term extension, which corresponds to the total number of days between the two dates.

U.S. Patent Application Serial No. 10/810,045 is not subject to a terminal disclaimer. In addition, there were no circumstances between January 19, 2010, and September 28, 2010, that constituted a failure by the Patentee to engage in reasonable efforts to conclude processing or examination of U.S. Patent Application Serial No. 10/810,045, as defined in 37 C.F.R. § 1.704.

In view of the foregoing, the Patentee respectfully requests that the U.S. Patent and Trademark Office correct the record to reflect that U.S. Patent Application Serial No. 10/810,045 (now U.S. Patent No. 7,805,190) is entitled to 1137 + 252 = 1389 total days of patent term extension. If a telephone conference would expedite consideration of this Request for Reconsideration of Patent Term Adjustment, the U.S. Patent and Trademark Office is invited to contact the undersigned attorney.

Please charge the required \$200.00 fee set forth in 37 C.F.R. § 1.18(e) to deposit account number 50-1778. Please charge any additional fees or credit any overpayment to deposit account number 50-1778.

Date: November 22, 2010
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